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8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 JESSE GARCIA, JR. on behalf of
13 himself and all others similarly
14 situated,

15 Plaintiffs,

16 v.

17 CAINE & WIENER COMPANY,
18 INC. and NESTLÉ WATERS
19 NORTH AMERICA, INC.,

20 Defendant
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) CASE NO. 16-cv-00850-DMS (DHB)

)

) **ORAL ARGUMENT**

)

) **NOTICE OF MOTION AND**

) **MOTION TO DISMISS SECOND**

) **AMENDED COMPLAINT AND**

) **STRIKE CLASS ALLEGATIONS**

) **PURSUANT TO FED. R. CIV. P.**

) **12(b)(6), 12(f) AND 23(d)(1)(D) AND**

) **JOINDER IN NESTLE MOTION TO**

) **DISMISS**

)

) **Date: January 20, 2017**

) **Time: 1:30 p.m.**

) **Judge: Hon. Dana M. Sabraw**

) **Dept.: 13A**

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**TO THE COURT, EACH PARTY, AND TO THE ATTORNEY OF
RECORD FOR EACH PARTY IN THIS ACTION:**

NOTICE IS HEREBY GIVEN that on Friday, January 20, 2017, at 1:30 p.m., in Department 13A of the Court, located at 333 West Broadway, San Diego, California 92101, or as soon thereafter as counsel may be heard, Defendant Caine & Weiner Company, Inc. (“C&W”) will move for an order to dismiss with prejudice the Second Amended Complaint filed by plaintiff Jesse Garcia, Jr. (“Plaintiff”) pursuant to Fed. R. Civ. P. 12(b)(6), and to move to dismiss or strike Plaintiff’s class claims against C&W pursuant to Fed. R. Civ. P. 12(b)(6), 12(f) and 23(d)(1)(D).

The motion to dismiss Plaintiff’s individual claims pursuant to Fed. R. Civ. P. 12(b)(6) is made upon the following grounds:

Plaintiff fails to state a plausible claim for relief under the Telephone Consumer Protection Act, 47 U.S.C. §227(b)(1) (“TCPA”) or Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, as he does not identify specific dates, times and identify the relevant defendant with respect to the calls at issue in this case.

The motion to dismiss or strike Plaintiff’s class claims pursuant to Fed. R. Civ. P. 12(b)(6), 12(f) and 23(d)(1)(D) is made upon the following grounds:

1 Plaintiff has failed to state a claim against C&W for class-wide relief under
2 the TCPA as Plaintiff's allegations do not establish the existence of a plausible
3 class based on the unique circumstance alleged with respect to Plaintiff.
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5 Plaintiff has failed to state a claim against C&W for class-wide relief under
6 the FDCPA as Plaintiff's allegations do not establish the existence of a plausible
7 class based on the unique circumstance alleged with respect to Plaintiff.
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9 C&W also joins in Defendant Nestle Waters North America, Inc.'s
10 ("NWNA") motion to dismiss.
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12 This motion and joinder are based upon this Notice of Motion,
13 Memorandum of Points and Authorities, the pleadings, records and files in this
14 action, and upon all oral and documentary evidence presented at the hearing of
15 this Motion.
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20 Dated: December 1, 2016

CARLSON & MESSER LLP

21 By: /s/ David J. Kaminski

22 David J. Kaminski
23 Stephen A. Watkins
24 Attorneys for Defendant,
25 CAINE & WEINER COMPANY,
26 INC.
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CERTIFICATE OF SERVICE

I hereby certify that on December 1, 2016, a true and correct copy of the foregoing NOTICE OF MOTION TO DISMISS was filed through the ECF system, which will send notification of such filing to the following e-mail addresses:

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DATED: December 1, 2016

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